



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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JUL 31 2018

RE: MUR 7435
David Vitter for U.S. Senate and
William Vanderbrook in his
official capacity as treasurer

Dear Mr. Spies:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting your client, David Vitter for U.S. Senate and William Vanderbrook, in his official capacity as treasurer (the "Committee"), may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On July 17, 2018, the Commission found reason to believe that the Committee violated 52 U.S.C. § 30116(f), a provision of the Act. The Factual and Legal Analysis, which provides a basis for the Commission's finding, is enclosed for your information.

In addition, please note that your client has a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to you as a way to

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

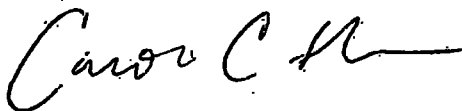
resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that you violated the law.

If you are interested in engaging in pre-probable cause conciliation, please contact Amanda Andrade, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. See 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

We look forward to your response.

On behalf of the Commission,



Caroline Hunter
Chair

Enclosures
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: David Vitter for U.S. Senate and MUR 7435
William Vanderbrook in his
official capacity as treasurer

11 **I. INTRODUCTION**

12 The Commission's Reports Analysis Division ("RAD") referred David Vitter for U.S.
13 Senate and William Vanderbrook in his official capacity as treasurer ("the Committee") to the
14 Office of the General Counsel ("OGC") for its failure to refund \$237,650 in general election
15 contributions after Vitter withdrew from the 2016 Louisiana Senate race prior to the general
16 election. As discussed below, the Commission finds reason to believe that the Committee
17 violated 52 U.S.C. § 30116(f) and 11 C.F.R. §§ 102.9(e), 110.1(b)(3), and 110.2(b)(3).

18 **II. FACTS**

19 The Committee was the principal campaign committee of former Louisiana Senator
20 David Vitter who ran as a candidate for re-election to the U.S. Senate during the 2016 election
21 cycle.¹ William Vanderbrook is the Committee's treasurer. In addition to being a candidate for
22 Senate, Vitter also ran for governor of Louisiana in the 2015 gubernatorial election. After losing
23 the gubernatorial race on November 21, 2015, however, Vitter announced he was withdrawing

¹ David Vitter, Statement of Candidacy (June 9, 2011).

1 from the 2016 Senate race.² At the time he withdrew, the Committee had approximately \$30,000
2 cash on hand.³

3 Under Louisiana's "open primary" system, all candidates appear on the same ballot in
4 November irrespective of any party affiliation.⁴ Louisiana refers to this election as the primary,
5 although it is held on the same day in November that other states hold their state general
6 election.⁵ If no candidate obtains a majority of votes in the November election, then the top two
7 candidates participate in a run-off election in December.⁶ Because of Louisiana's unique
8 electoral system, the Commission has advised candidates that it considers the "primary election"
9 date in Louisiana to be the last day to file for the November election ballot.⁷ For the 2016 Senate
10 cycle, the Commission considered the primary election date to be July 22, 2016 — eight months
11 after Vitter withdrew from the race in November 2015. Accordingly, on April 12, 2016, RAD
12 sent the Committee a Request for Additional Information ("RAFI") noting the receipt of
13 contributions designated for the 2016 Senate general election race totaling over \$300,000, and
14 requesting that the Committee refund or redesignate those contributions since Vitter would not
15 be participating in the 2016 general election.⁸ Vanderbrook spoke with RAD by phone the next

² Request for Consideration of a Legal Question by the Commission from the Committee (LRA 1027) at 2.

³ David Vitter for U.S. Senate ("Vitter") 2015 Year-End Report at 2 (Jan. 29, 2016) (cash on hand was \$30,226.70 at the close of reporting period).

⁴ Advisory Op. 1984-54 (Friends of Bob Livingston) at 1 ("AO 1984-54"). *See also* <https://www.sos.la.gov/ElectionsAndVoting/GetElectionInformation/ReviewTypesOfElections/Pages/default.aspx> (under Louisiana's open primary system, "any qualified elector may qualify as a candidate, regardless of party, and run for office and all eligible voters may cast a vote in the election, regardless of party affiliation.")

⁵ La. Rev. Stat. Ann. § 18:402.

⁶ *Id.* § 18:481; AO 1984-54 at 2.

⁷ Advisory Op. 2000-29, at 5 (Louisiana Congressional Delegation).

⁸ RAFI: 2015 Year-End Report (Apr. 12, 2016).

1 day, and explained that the Committee believed it was not obligated to refund any general
2 election contributions because of Louisiana's unique open primary election system.⁹ On May
3 24, 2016, the Committee filed a Miscellaneous Document with the Commission stating that
4 RAD's RFAI "is not reflective of Louisiana's unique runoff election system."¹⁰ On July 27,
5 2016, RAD, after seeking advice from OGC, confirmed to Vanderbrook that the Act requires that
6 the Committee redesignate or refund the general election contributions, but noted that the
7 Committee could seek a legal opinion from the Commission.¹¹

8 On August 17, 2016, the Committee submitted a Request for Consideration of a Legal
9 Question concerning whether the Committee was required to keep primary and general election
10 funds segregated in light of Louisiana's "open primary" system.¹² In response, the Commission
11 voted unanimously that the Committee must refund all general election contributions.¹³

12 Following the Commission's decision in October 2016, counsel for the Committee spoke
13 with RAD about refunding as many general election contributions as possible using the
14 Committee's cash on hand, which the Committee estimated to be about \$85,000 at that time.¹⁴
15 The Committee also informed RAD that it was expecting over \$200,000 in restitution payments
16 from a vendor that had embezzled funds from the Committee,¹⁵ and would use all of that money

⁹ RAD Referral 17L-22 at 5 ("Referral").

¹⁰ Misc. Document (May 24, 2016).

¹¹ Referral at 5.

¹² LRA 1027.

¹³ Vote Certification, LRA 1027 (Oct. 27, 2016).

¹⁴ Referral at 6.

¹⁵ That embezzlement was the subject of MUR 6980 (Pate), as well as a criminal prosecution. *United States v. Pate*, No. 15-cr-74 (W.D. Ky.).

1 to make additional refunds.¹⁶ The Committee's 2016 Year-End Report reflects refunds of
2 \$81,800, with just over \$10,000 cash on hand remaining.¹⁷

3 The Committee did not make any additional refunds beyond this \$81,800, and on July 27,
4 2017, RAD referred the Committee to OGC. The Committee currently has unrefunded general
5 election contributions totaling \$237,650.¹⁸ The Committee submitted a response to the referral
6 on September 8, 2017, which again proposed to commit any restitution funds the Committee
7 receives to repaying the outstanding general election contributions.¹⁹ The Committee reported
8 receiving a restitution payment from the U.S. Treasury of roughly \$38,000 on September 21,
9 2017, and had just over \$42,000 cash on hand at the end of 2017,²⁰ but has made no further
10 refunds.

11 III. LEGAL ANALYSIS

12 Under the Federal Election Campaign Act of 1971, as amended (the "Act"), an individual
13 may not make a contribution to a candidate with respect to any election in excess of the legal
14 limit, which was \$2,700 per election during the 2016 election cycle.²¹ A multicandidate political
15 action committee may not make contributions to a candidate in excess of \$5,000 per election.²²

¹⁶ Referral at 6.

¹⁷ 2016 Year-End Report (Jan. 31, 2017). Although these refunds were made more than 60 days after Vitter withdrew from the Senate race, RAD did not include the contributions in the referral because the refunds were made within 60 days from the date the Committee was notified of the Commission's response to the Request for Consideration of a Legal Question.

¹⁸ Referral at 1. The contributors who have not received refunds include 78 individuals, 2 limited liability companies, 40 multicandidate political action committees, and 1 non-multicandidate political action committee. *Id.*

¹⁹ Response at 1-2 (Sept. 8, 2017).

²⁰ 2017 October Quarterly Report (Oct. 13, 2017); 2017 Year-End Report (Jan. 30, 2018).

²¹ 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1).

²² 52 U.S.C. § 30116(a)(2)(A); 11 C.F.R. § 110.2(b)(1).

1 A primary election and a general election are each considered a separate "election" under the
2 Act, and the contribution limits are applied separately with respect to each election.²³
3 Candidates and political committees are prohibited from knowingly accepting excessive
4 contributions.²⁴

5 The Commission's regulations permit a candidate's committee to receive contributions
6 for the general election prior to the primary election.²⁵ However, the committee must use an
7 acceptable accounting method to distinguish between primary and general election
8 contributions.²⁶ The committee's records must demonstrate that prior to the primary election,
9 the committee's recorded cash on hand was at all times equal to or in excess of the sum of
10 general election contributions received less the sum of general election disbursements made.²⁷

11 Furthermore, if the candidate ultimately does not become a candidate for the general
12 election, the committee must refund, redesignate, or reattribute any general election contributions
13 in accordance with applicable Commission regulations.²⁸ The committee must do so within 60
14 days of the date that the committee has actual notice of the need to redesignate, reattribute, or
15 refund the contributions.²⁹ A committee cannot redesignate general election funds to the primary
16 election if doing so would cause the contributor to exceed the maximum allowable contribution

²³ 52 U.S.C. §§ 30101(1)(A), 30116(a)(6); 11 C.F.R. §§ 100.2, 110.1(j).

²⁴ 52 U.S.C. § 30116(f).

²⁵ 11 C.F.R. § 102.9(e)(1).

²⁶ *Id.*

²⁷ *Id.* § 102.9(e)(2).

²⁸ *Id.* § 102.9(e)(3).

²⁹ See Advisory Op. 2008-04 (Dodd); Advisory Op. 1992-15 (Russo).

1 for that election.³⁰ Likewise, reattribution of a general election contribution may only occur to
2 the extent that such attribution does not exceed the contributor's contribution limits.³¹

3 In this matter, Vitter withdrew from the Senate race on November 21, 2015, prior to July
4 22, 2016, the date the Commission considers the primary election date in Louisiana.
5 Accordingly, the Committee was required to refund the contributions totaling \$237,650 that were
6 designated for the 2016 Senate general election within 60 days of Vitter's withdrawal on
7 November 21, 2015, but failed to do so. Nor did the Committee refund those contributions
8 within 60 days from the date it was notified of the Commission's response to the Committee's
9 Request for Consideration of a Legal Question.

10 In its response to the referral, the Committee no longer disputes that it was required to
11 refund contributions designated for the 2016 general election. Rather, it argues that "the fact it is
12 a victim of fraud and owed over \$250,000 is preventing it from repaying the donors."³²
13 However, at various times after RAD informed the Committee of its obligation to refund the
14 general election contributions, the Committee had funds that it could have used to make refunds,
15 but chose not to do so. For example, the Committee received \$154,017.36 in restitution from the
16 U.S. Treasury between August and September 2016 — well after RAD informed the Committee

³⁰ 11 C.F.R. §§ 110.1(b)(5)(iii), 110.2(b)(5)(iii). Furthermore, amounts redesignated may not exceed the net debts outstanding from the primary. *Id.*

³¹ *Id.* § 110.1(k)(3)(ii)(B)(1).

³² Resp. at 2.

1 of its obligation to refund general election contributions — but used only about half of those
2 funds to make the required refunds of the general election contributions.³³

3 Further, the embezzlement does not affect the Committee's responsibility under
4 Commission regulations to separately account for its primary and general election funds and
5 maintain cash on hand that is at all times equal to or in excess of the sum of general election
6 contributions received less the sum of general election disbursements made. Here, it is clear that
7 the Committee failed to comply with these requirements. In 2014 and 2015, for example, the
8 Committee disbursed \$850,000 to the Fund for Louisiana's Future (the "Fund"), a separate,
9 independent expenditure-only committee supporting Vitter's gubernatorial race, leaving the
10 Committee with substantially less cash on hand than it had received in general election
11 contributions.³⁴

12 Based on the foregoing, the Commission finds reason to believe that David Vitter for
13 U.S. Senate and William Vanderbrook in his official capacity as treasurer violated 52 U.S.C. §
14 30116(f) and 11 C.F.R. §§ 102.9(e), 110.1(b)(3), and 110.2(b)(3) by knowingly accepting
15 excessive contributions and failing to refund contributions designated for the general election.

³³ After receiving the restitution payment, the Committee disbursed \$50,000 to the National Republican Senatorial Committee on September 15, 2016. Vitter 2016 October Quarterly Report (Oct. 13, 2016). And during the fourth quarter of 2016, almost one year after Vitter withdrew from the Senate race, the Committee reported over \$20,000 in operating expenditures, which included over \$13,000 spent on restaurant meals, designated for the 2016 primary election. Vitter 2016 Year-End Report at 2, 6-13 (Jan. 31, 2017).

³⁴ The Committee's 2014 Year-End Report shows disbursements to the Fund for Louisiana's Future of \$740,000 on November 5, 2014, and \$50,000 on December 31, 2014, leaving \$41,142.68 cash on hand at the end of the reporting period. Yet by the end of 2014, the Committee had already accepted \$192,950 of the unrefunded general election contributions RAD referred. The Committee's 2015 October Quarterly Report shows a disbursement to the Fund for Louisiana's Future of \$60,000 on July 10, 2015, which left the Committee with \$26,216.37 cash on hand at the end of the reporting period. By July 10, 2015, the Committee had already accepted \$220,350 of the unrefunded general election contributions RAD referred.